

## **Board Administration and Regulatory Coordination Unit**

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### **Division 3. Air Resources Board**

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### **Chapter 1. Air Resources Board**

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### **Subchapter 1.25. Administrative Procedures–Hearings**

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### **Article 4. Administrative Hearing Procedures for Review of Citations**

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### **Subarticle 6. Resolution of Proceeding Without Hearing**

#### **§ 60075.25. Motions for Summary Determination of Issues.**

(a) Any party may file a motion for summary judgment or summary adjudication of the issues. Such motions shall include supporting legal argument and, where necessary, affidavits showing that there is no genuine issue of material fact for determination regarding the identified issues. A party opposing such a motion shall show by affidavit or other documentation that a genuine issue of material fact as to the issues raised exists. After reviewing the motion and response of the parties, the administrative record, and any arguments of the parties, the hearing officer shall determine whether a genuine issue of material fact as to the issues exists and whether a party is entitled to judgment as to liability as a matter of law.

(b) If, upon considering a motion under subparagraph (c), the hearing officer determines that a party is entitled to summary judgment as to liability as a matter of law, the hearing officer shall issue a written order or decision that sets forth necessary findings of fact and conclusions of law regarding all matters that were at issue. If the decision finds liability, the hearing officer shall follow the penalty assessment criteria set forth in section 60075.39.

(c) Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the hearing officer may deny the motion, or grant a continuance to permit affidavits to be obtained, or to permit discovery as provided under these procedures.

(d) The hearing officer shall deny a request for summary determination of liability if he or she finds the administrative record, including any evidence presented by the parties as part of this motion, present a genuine issue of material fact. If the hearing officer denies a request for summary determination, or denies such a request in part, the hearing officer shall promptly issue to each party a written ruling as to the existence of a genuine issue of material fact as to liability and the reasons for the ruling. The matter shall continue to be set for hearing on all issues for which a genuine issue of material fact exists.

NOTE: Authority cited: Sections 39600, 39601, 43028, 43031(a) and 44011.6(m), Health and Safety Code. Reference: *Mathews v. Eldridge*, 424 U.S. 319 (1976); and Sections 43028, 43031(a) and 44011.6, Health and Safety Code.

#### **REFERENCE**